

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
FILE

In the Matter of  
Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings

) GC Docket No. 92-52  
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To: The Commission

COMMENTS OF THE GEORGIA PUBLIC  
TELECOMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION  
OF THE SECRETARY

1. The Georgia Public Telecommunications Commission (Georgia Public) submits, as comments in this rule making proceeding, the attached "Brief and Exceptions" dated July 8, 1991 filed with the Review Board in a comparative hearing proceeding for a new FM channel at Roswell, Georgia (MM Docket No. 89-337). In that document, Georgia Public sets forth (a) criticism of the "integration of ownership and management" criterion, (b) support for consideration of an applicant's record of ownership and operation of broadcast stations and (c) support for consideration of an applicant's program service proposals that are based upon actual operating experience.

2. The Commission should be aware that on May 8, 1992 the Review Board released its decision in the Roswell proceeding, declining to consider the "novel" arguments advanced by Georgia Public as beyond its jurisdiction (FCC 92R-34, ¶¶8-10). Georgia Public will file an application for review to bring those arguments before the full Commission for consideration in the context of the Roswell proceeding. The arguments are being presented here as

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comments regarding the need for change in the comparative hearing policies under consideration, without waiving Georgia Public's right to argue the invalidity of those policies in the Roswell proceeding. Copies of these comments are being served on the other parties to the Roswell proceeding.

Respectfully submitted,

  
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June 2, 1992

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 89-337
	)	
GEORGIA PUBLIC TELECOMMUNICATIONS	)	File No. BPED-870727MA
COMMISSION	)	
	)	
<u>et al.</u>	)	<u>et seq.</u>
	)	
For a Construction Permit	)	
for a new FM station on	)	
Channel 298A (107.5 MHz)	)	
at Roswell, Georgia	)	

To: The Review Board

BRIEF AND EXCEPTIONS OF  
GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION

1. Georgia Public Telecommunications Commission (Georgia Public) takes exception to the initial decision of Judge Sippel released May 22, 1991.

STATEMENT OF THE CASE

A.

Seven Commercial Applicants

2. This proceeding involves Georgia Public and seven other, commercial applicants.

3. Mr. Miles. This applicant, favored by Judge Sippel, is approximately 77 years old and long-since retired after a broadcasting career of some 52 years. During virtually all of his career, he was employed in an engineering capacity at radio stations in Atlanta. For some 25 years he was employed by group owner Ragan Henry, initially as chief engineer of Mr. Henry's Atlanta station, then as director of engineering of all nine stations then owned by Mr. Henry. The FCC-integration modus operandi was not in use. Mr. Miles, a career professional working full time, was not the owner. Mr. Henry, the owner, did not work full time at the station. Under this modus operandi, the technical operations of the stations were first rate. Initial Decision (ID) ¶¶77-83; Tr. 186-188; see also ¶30, infra.

4. Mr. Rounsaville. This applicant, currently approximately 75 years old, sold his extensive chain of broadcast stations in 1982. Mr. Rounsaville justifiably considers himself a pioneer in the broadcast industry, having successfully owned and operated some 24 radio stations during a period of time spanning more than forty years, from 1941 to 1982. Except at the very beginning of his career, Mr. Rounsaville never engaged in an FCC-integration modus operandi of working full time at a radio station that he owned. Rather, Mr. Rounsaville delegated day-to-day management to his employees operating under his entrepreneurial oversight and direction. ID ¶¶96-103; Rounsaville Ex. 1; Tr. 274-276.

5. Mr. Holley. This applicant is approximately 64 years old. In order to have FCC-integration credit, he proposes to give up two long-standing radio station interests. He filed duo-applications contemporaneously, for Roswell and for Mableton, both in the Atlanta area, and was not credible in his testimony on this score. ID ¶¶112-123; Tr.1624.

6. Mr. Jackson. This applicant is a marketing consultant and is engaged in the real estate business. He is not a long-time local resident and his civic connections consist principally of memberships, which commenced at about the time he filed the application. His FCC-integration proposal is not enhanced by minority, gender or significant prior broadcast experience. ID ¶¶70-76.

7. Johnson Broadcasting, Inc. This two-tiered applicant has been disqualified on grounds that (a) for an extended period of time, the real party in interest was Sonrise Management Services, Inc. and (b) its application contained a false financial certification. ID ¶¶127-130, 133-136.

8. Southern Radio Services, Inc. This two-tiered applicant has been disqualified on grounds that (a) its application contained a false financial certification and (b) it failed to establish its financial qualifications. ID ¶¶142-145. Also, Judge Sippel's findings make clear that this applicant's integration proposal is not creditworthy. ID ¶¶104-111.

9. Mazo Radio Company. This two-tiered applicant has been disqualified on the grounds that (a) the purported passive investor is the real party in interest and (b) the applicant's ownership\integration

structure is a sham. ID ¶¶146-150.

B.

Georgia Public: Exclusion of Relevant and Probative Evidence

10. The Initial Decision deals with the application of Georgia Public on the basis of evidence received in the record which merely identifies the applicant and lists its other broadcast stations. ID ¶¶60-61, 68-69, 161, 174. Exception is taken to two rulings by Judge Sippel, excluding virtually all of the direct written case material of Georgia Public Exs. 1-6, Tr. 75-82, 121-128, and declining to permit the presentation of evidence regarding Georgia Public's program proposals. FCC 89M-2742. We base this exception on our Memorandum of Points and Authorities in Support of Admission of Georgia Public Exs. 1-6, filed February 20, 1990, our Motion to Modify or Interpret the Scope of the Standard Comparative Issue filed September 21, 1989, and our Reply to Oppositions to said Motion filed November 3, 1989. Had the excluded evidence been received (and sustained the test of cross examination and rebuttal, which we believe would be the case), the record would support the analysis that follows in the ensuing portions of this brief.

11. Structure. Georgia Public is an agency of the State of Georgia, established by statute. ID ¶68; Amendment of application, filed August 29, 1990 (1990 Amendment).

12. Members of the Commission. There are nine members of the Commission. Three are ex officio members by virtue of their positions: the State Superintendent of Schools, the Chancellor of the University System of Georgia and the Commissioner of the Georgia Department of Technology and Adult Education. The remaining six are appointed by the Governor. ID ¶68; 1990 Amendment. The nine present members of the Commission are:

(a) Frank C. Jones, Chairman, a resident of Atlanta within the service area of the proposed station for approximately 13 years, former President of the State Bar of Georgia. Georgia Public Ex. 1, p. 2.

(b) Dr. Werner Rogers, State Superintendent of Schools, also a resident of the proposed service

area for the past approximately 12 years. Georgia Public Ex. 1, p. 2.

(c) Dr. Dean Probst, Chancellor and Chief Administrative Officer of the University System of Georgia, a resident of the proposed service area for the past approximately six years. Georgia Public Ex. 1, pp. 2-3.

(d) Jackie M. Ward, past Chairman of the Board of Regents of the University System, resident of the proposed service area for the past approximately five years. Ms. Ward is founder and CEO of Computer Generation, Inc. Georgia Public Ex. 1, p. 3.

(e) Robert E. James, President of Carver State Bank in Savannah, Georgia, minority, named one of 100 most influential Blacks by Ebony Magazine. Georgia Public Ex. 1, p. 3.

(f) Lovick P. Corn, resident of Columbus, Georgia, former President of Georgia Agribusiness Council. Georgia Public Ex. 1, p. 3.

(g) Dr. Kenneth H. Breeden, Commissioner of the Georgia Department of Technology and Adult Education, resident of Gainesville, Georgia. 1990 Amendment.

(h) William W. Allison, consultant to Coca Cola Scholars Foundation, Atlanta. 1990 Amendment.

(i) Nancy Connolly, civic leader with long standing interest in public radio, residing in Augusta, Georgia. 1990 Amendment.

13. Executive Officials. The day-to-day operation of Georgia Public's telecommunications facilities is conducted by the executive officials of Georgia Public, carrying out the policies adopted by the Commission to implement its mandate. Those officials are Executive Director Richard E. Ottinger, Deputy Director Frank D. Bugg, Jr. and the Director of the Radio Division, Phil Goodman. ID Fn 18.

14. Dr. Ottinger. At the time of the hearing, Dr. Ottinger was 57 years of age. He has resided in the proposed service area since 1968 (23 years). He has been active in local civic organizations including Member and Chairman, Goals Commission, DeKalb County (relative to DeKalb County School

System), PTA President, Cub Scout Pack Chairman, High School Touchdown Club President, Swim and Racquet Club President, and Manager, American Horse Show competition. He holds a Masters Degree in Education from the University of Tennessee and a doctorate degree in Educational Administration from Auburn University. Since 1968 Dr. Ottinger has served as the Executive Director of Georgia Public and the predecessor agencies. He chairs the Board of Trustees of the National Association of Public Television Stations (NAPTS) and he has also served as Chairman of the Southern Educational Communications Association (SECA), a 38-state member association of public television stations. Georgia Public Ex. 4.

15. Mr. Bugg. At the time of the hearing, Mr. Bugg was 44 years of age. He has resided within the proposed service area since 1983. From 1986-1987 he was a member of the Roswell/North Fulton Chapter of Ducks Unlimited, an organization which works to protect the wetlands for duck migration. An attorney, Mr. Bugg has served as the Deputy Director of Georgia Public since 1987. An engineer, from 1982 to 1987 Mr. Bugg served as Director of Engineering in charge of all technical aspects of operation including the design of the nine station television network and the commencing of a nine station radio network. Previously, he served as the chief financial officer of Georgia Public. Mr. Bugg currently occupies a number of positions in the public television industry such as National Chairman, Public Telecommunications Financial Management Association, member of committees of the Corporation for Public Broadcasting (CPB) and member of the FCC advisory committee on HDTV. Georgia Public Ex. 5.

16. Mr. Goodman. At the time of the hearing, Mr. Goodman was 57 years of age. He has resided in the proposed service area for the past 20 years. He has a BS degree in radio/television/motion pictures from the University of North Carolina. Since 1985 Mr. Goodman has served as Director of Radio for Georgia Public, overseeing the operation of Georgia Public's Peach State Radio Network which consists of nine stations. He has served in other positions at Georgia State, as well as noncommercial

stations in Louisiana and New York State dating back to 1962. Georgia Public Ex. 6.

17. Stewardship responsibilities of Commissioners and executive officials. The members of the Commission are officials of the state and, if not elected directly by the people, are responsible to its elected officials. The executive staff are all employees of the state, and in addition to their responsibilities for broadcast licenses under the Communications Act to serve the public interest, are charged by law with carrying out the mandate of Georgia Public. Thus, they are trustees with fiduciary responsibilities to the citizens of the state which derive from both the Commission's license and state law. Georgia Ex. 1, p. 4.

18. Management and oversight of proposed Roswell station. Primary responsibility for the day-to-day operation of the station will rest with Mr. Goodman. He will regularly devote twenty hours a week or more directing the operation of the station. Dr. Ottinger and Mr. Bugg will oversee Mr. Goodman. Dr. Ottinger implements the policies and long range goals of the Commission; Mr. Bugg is responsible for the day-to-day operations of Georgia Public; and Mr. Goodman will report directly to him. While Dr. Ottinger and Mr. Bugg will devote substantial portions of their time to Roswell, it is not anticipated that they will routinely devote 20 hours a week to the station. The members of the Commission are responsible for establishing policies for the operation of the stations licensed to it and, in that capacity, will review the operations of the Roswell station and set policies for its operation. None of the members of the Commission is expected to devote as much as 20 hours per week to the station. ID ¶69; Georgia Public Ex. 1, pp. 5-6.

19. Other Broadcast Stations. Georgia Public currently owns and operates nine FM radio stations, nine television stations and twelve television translators. It does not propose to divest any of these stations. To the contrary, the role of Georgia Public is to maintain and develop broadcast properties and services, and in the past 32 years dating back to 1959, Georgia Public has never sold any broadcast station. ID ¶¶60-61; Georgia Public Ex. 1, p. 10.



20. Proposed Main Channel Programming. Georgia Public submitted evidence concerning surveys of leaders of Roswell and environs conducted in June 1988 and September 1989. These surveys consistently show that there is not adequate radio service in the areas of classical music and information about the arts. These surveys also reflect a need for a local radio station to address news and issues of Roswell and environs that are not met by media interested in serving the Atlanta metropolitan area. Georgia Public submitted sworn statements from members of the community and regarding interviews of members of the community to a similar force and effect. This mirrors the experience of officials of Georgia Public about the unfulfilled program need for classical music and programming regarding the arts which they have found in radio markets throughout the State of Georgia, motivating Georgia Public to develop the Peach State Public Radio operations with the widespread support of local, state and national leaders and organizations including monetary support by state entities and NTIA. Motion to Modify or Interpret the Scope of the Standard Comparative Issue, filed September 21, 1989 (Motion), pp. 5-6, Appendices 8-10.

21. Georgia Public submitted a comprehensive report on existing radio services available to Roswell and environs, which demonstrates the lack of a full time reliable classical music service<sup>1/</sup>, the absence of substantial programming regarding the arts and the absence of local news and public affairs programming for Roswell and environs. Georgia Public provided its proposed program schedule for the station which includes approximately 130 hours per week of classical music programming, approximately 20 hours per week of other programming regarding cultural and performing arts, and a major schedule of local news and public affairs programs. Motion, pp. 6-10, Appendices A, 12.

22. Subcarrier channel. The State of Georgia through its Department of Human Resources has

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<sup>1/</sup> One station, WGKA(AM), broadcasts classical music during the daytime hours only; educational FM station WABE devotes 70% of its hours to classical music, but sustains serious interference problems to its signal in the proposed service area. Motion, pp. 8-9 and Appendix A.

ascertained a need to provide a radio reading service to blind and visually handicapped Georgians who cannot read for themselves. The Georgia Radio Reading Service has determined that approximately 3% of the population has a handicap of this type. This translates to approximately 15,000 to 18,000 persons within the proposed service area of the station. As is the case with other stations in the Peach State Radio Network, Georgia Public will employ a subcarrier to present the around-the-clock programming provided by the Georgia Radio Reading Service, reading newspapers, magazines and books for the benefit of the visually impaired, who have special receivers installed in their homes at state expense. At the Roswell station, three hours daily will be locally programmed to read from the Roswell Neighbor and the North Fulton Extra section of the Atlanta Journal/Constitution. Motion, pp. 14-15, Appendices 13-14.

#### ISSUES PRESENTED

23. The following issues are presented:

A. Whether "FCC-integration" proposals of the commercial applicants should be employed exclusively to determine the likelihood of effectuation of program service in the public interest when other relevant and probative evidence concerning the likelihood of effectuation of program service in the public interest by Georgia Public is rejected?

B. Whether Georgia Public should be assessed a demerit for its ownership and operation of other broadcast stations in the State of Georgia when other relevant and probative evidence that the program proposals of Georgia Public will enhance the diversity of program service by fulfilling program needs which have not been met by commercial broadcast stations is rejected?

#### ARGUMENT

A.

The "FCC-integration" proposals of the commercial applicants are an invalid measure of likelihood of program service in the public interest, in contrast to the proven course of conduct of Georgia Public in establishing and expanding program service to the public for a period of 32 years.

24. For many years the Commission has looked to "integration" of ownership in day-to-day management, proposed by commercial broadcast applicants in comparative hearing proceedings, as a criterion giving rise to an expectation of effectuation of program service in the public interest. Policy Statement on Comparative Broadcast Hearings, 1 FCC2d 393 (1965). The theory is that if the owners of the broadcast station devote their full personal time to the operations of the station, the viewpoints of those owners as to program service will more likely be carried out. The theory also is that if the owners (who are thus integrated) are local residents or minorities or women or civic leaders or have broadcast experience, this enhances the expectation that integration will lead to programming service in the public interest.

25. These concepts have led to a massive volume of case law with distinctions and ground rules which are difficult for those outside (or, indeed, inside) FCC hearing rooms to comprehend. For example, 100% integration will be compared to 90% integration, but will not be compared to, say, 85% or 80% integration. The New Continental Broadcasting Co., 88 FCC2d (1981). Limited partners cannot communicate with general partners concerning any of the details of station operation which they (the limited partners) are funding -- usually in the entirety or nearly so. Ownership Attribution, 58 RR2d 604 (1985). Nonvoting stockholders may put up all of the funds to prosecute the applications, construct the station and finance station operations, but it is vital that a voting stockholder (often having no personal financial investment) opens and maintains the corporate bank account, speaks to the tower owner about renting space for the antenna and performs other ministerial chores (under expert legal guidance) during the short period of time in which the government application form is filled out and filed. E.g., Coast TV, 5 FCCRcd 2751 (1990).

26. Integration that is imbued with malafides will be disallowed altogether; integration that is merely "defective" will be partially accepted and partially disallowed. Susan S. Mulkey, 3 FCC Rcd 590 (1988). Forty hours a week integration is decisionally superior to 35 hours a week integration. The

difference between the two is calculated arithmetically by a formula analogous to something called the Hirschman-Herfindahl Index. Omaha TV 15, Inc., 4 FCC Rcd 730 (1988). Integration as a "business manager" is credited, integration as an "office manager" is not. Compare Grand Broadcasting Co., 36 FCC 619 (1964) and Policy Statement, *supra*, with, e.g., Payne Communications, Inc., 6[??] RR2d 1323 (1986); Doyland Forney, 3 FCC Rcd 6330 (1988). An individual licensee of a daytime AM station will receive a comparative credit if he or she files for a local FM permit as an individual, but will receive a comparative demerit if he or she files for a local FM permit through a wholly-owned corporation. FM Channel Assignments, 101 FCC2d 638 (1985), *on reconsideration*, 59 RR2d 1221 (1986). The case discussion of spousal attributions for purposes of integration is convoluted and constantly shifting. E.g., Absolutely Great Radio, Inc., 92 FCC2d 1183 (ALJ 1982), *reversed*, 92 FCC2d 1171 (Rev.Bd. 1983), *reversed*, 95 FCC2d 1023 (Commission 1983), *recon. denied*, 56 RRed 251 (1984), *reversed sub nom.* Ventura Broadcasting Co. v. FCC, 765 F.2d 184 (D.C.Cir. 1985), *decision on remand*, 104 FCC2d (1986).

27. And so on. Each case depends on the overall factual mosaic, viewed largely in subjective terms. Objective standards and customary legal discipline are difficult to apply to the process. Rulings by different Judges vary. The Review Board often reverses Initial Decisions. The Commission via the Office of the General Counsel reverses the Review Board with some frequency. The fine points of the case law are continually modified, sometimes in far reaching ways, and often the changed case law is applied retroactively to applications that were filed when earlier case law was in effect. These uncertainties render comparative broadcast license cases a legal no-man's land that places the parties and this Commission beyond the bounds of reasoned agency decision-making. Motor Vehicle Manufacturer's Association v. State Farm Mutual Auto Ins. Co., 463 U.S. 29 (1983).

28. This quicksand is also ineffective agency decision-making. When the Commission's policies on this score were adopted in the 1965 policy statement, there were grounds for expecting that

"ownership integration" would be carried out on an ongoing and meaningful basis. At that point in time the Commission had a strong policy against trafficking in broadcast licenses. Applications for Voluntary Assignments or Transfers of Control, 32 FCC 689 (1962)(adopting three-year minimum holding period); see numerous case adjudications before the Commission and in the Courts, supported by Congressional leaders, examples of which are cited in the Concurring Statement of Commissioner Rivera in Transfer of Broadcast Facilities, 52 RR2d 1081, 1092 (1982). However, in 1982 in the matter just cited, the Commission abolished its strong policy against trafficking in licenses, inaugurating an era of licensee stewardship in which broadcast licenses are bought and sold like grain futures. The current "grain futures" era of licensee responsibility is illustrated by such activities as the purchase, dismantling and resale, for billions of dollars of profits, first of the Wometco chain of radio and television stations (built over a 30-year period), then of the Storer chain of stations (also built over a 30-year period), all in the space of several years, by an entity (Kohlberg, Kravis, Roberts & Co.) whose sole line of business is to buy and sell corporations for rapid turnover profits. Under current rules, in the event an applicant wins the construction permit in a comparative hearing, the applicant need operate the station for a period of only one year before it can sell the property. 47 C.F.R. §73.3597(a)(1).<sup>2/</sup>

29. Notwithstanding operation of the "integration" criterion under the 1965 policy statement for 26 years now, the Commission has never conducted studies or developed empirical evidence to demonstrate that "integrated" ownership (structured in accord with FCC policies and case decisions), in fact, yields program service more attuned to the public interest than broadcast ownership determined by

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<sup>2/</sup>The 1965 policy statement indicates that integration commitments should be "permanent" and the Review Board has made some effort to adhere to the notion of a long-term commitment. E.g., Tele-Broadcasters of California, Inc., 58 RR2d 223, 232, n 43 (1985); Signal Ministries, Inc., 60 RR2d 1700, 1711, n 16 (1986); Cuban-American Limited, 2 FCC Rcd 3264, 3268 (1987). However, to our best information and belief, the practice of the Commission's transfer staff has been that broadcast licenses are fully and routinely alienable after one year in accord with 47 C.F.R. §73.3597(a)(1). Indeed, under the Administrative Procedure Act, members of the public are entitled to rely on the one-year provision of this published agency regulation. 5 U.S.C. §552(a)(1)(C) and (D).

other means including the unilateral processing of uncontested applications. Nor has the Commission ever conducted studies or developed empirical evidence to demonstrate that its "integration" criterion, in fact, has increased the level of broadcast station ownership in the hands of minorities or women or local residents and civic leaders. The Commission, to our knowledge, has not even made a simple statistical check on the actual length of time its "integrated" license winners have owned and operated their broadcast stations.

30. We invite opposing parties, in reply to this brief and throughout the future course of this litigation, to cite actual instances since the 1981-1982 time period<sup>3/</sup> when an applicant which prevailed in a comparative hearing based upon its integration proposals actually constructed, owned and operated the broadcast station employing the integration proposals in the manner represented to the Commission for a period substantially exceeding the mandatory one-year. We extended this invitation earlier in this proceeding and to date there have been no takers. A recent case illustrates our point. The Commission spent a number of years on the application of Debra D. Carrigan, 100 FCC2d 721 (1985), review denied, 104 FCC2d 826 (1986), affirmed on other grounds sub nom. Bernstein/Rein Advertising, Inc. v. FCC, 830 F.2d 1188 (D.C.Cir. 1987). The Review Board and the Commission upheld Ms. Carrigan's integration proposal as the decisional factor under the comparative issue. Following the conclusion of this litigation which spanned a period of five years, Ms. Carrigan commenced operation of the station in April 1989 and within a period of five months, in August 1989, contracted to sell the station (for an immediate payment of \$1,100,000 for a 49% interest with an option to acquire the remaining 51% at the end of the first year for an additional \$3,100,000, or total consideration of \$4,200,000). Official notice requested of FCC records. The buyer was Ragan Henry, a well-known and successful group broadcaster who has testified in an FCC proceeding that he does not employ the Commission's "integration" modus

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<sup>3/</sup>The case of Anax Broadcasting, Inc., 87 FCC2d 483, which spawned extensive use of two-tiered applications that in turn spawned a deluge of phony integration proposals, was decided in 1981. The three-year rule was rescinded in 1982. Transfer of Broadcast Facilities, supra.

operandi. Rather, he operates through paid managers at each station who receive small stock interests for incentive. Willie A. Jefferson d/b/a Opportunity Broadcasting of Shreveport, MM Docket No. 88-524 before Judge Luton, Caddo Ex. 11, pp. 2-12, 65, 101-104.

31. Reliance on integration of ownership and management as the exclusive decisional tool for predicting the likelihood of program service in the public interest is arbitrary and capricious. Four applicants in this proceeding, other than Georgia Public, are individuals: Messrs. Miles, Rounsaville, Holley and Jackson. Three of these four individuals, with all due respect, are simply too old. Mr. Miles, Judge Sippel's preferred choice, is 77 years old, Mr. Rounsaville is 75 years old and Mr. Holley is 64 years old. By the time this case is concluded, and the Roswell station is constructed, add another two or three years, minimum. We have no quarrel with the concept that our nation's elderly have wisdom, experience and energy, and for many of their later years can serve the role of entrepreneurial overseers, counsellors and advisers to station management. But this would earn them no "FCC-integration" credit. For that, they must spend full time in the day-to-day hands-on management of the station. Over a long period of time. Otherwise, "integration" as a predictive mechanism for determining public interest program service is a mirage without lasting value or meaning. To use the Commission's word in the 1965 policy statement, integration must be permanent.

32. If the Commission's integration criterion is to have meaning or efficacy in the case of Mr. Miles, this means returning to such a daily grind permanently, beginning when he is about 80 years old, approximately ten years after he retired. In the case of Mr. Rounsaville, this means overturning a lifetime modus operandi of entrepreneurial oversight of hired managers, in a daily grind to last permanently, beginning in his late seventies, more than ten years after he sold his broadcast holdings. In the case of Mr. Holley, this means selling two radio stations that have been his life for the past 15 to 20 years, and embarking on a new daily grind to last permanently, in his late sixties. It is possible that one of these scenarios could happen -- there are rare instances of people who put in full 40-hour work

weeks until they are 90. But this is not the norm. To premise effectuation of public interest programming on the decisional assumption that people in these age categories will carry out such a work week on a long-term, multiple-year, permanent basis simply is not rational or consistent with human experience. Nor is there any evidence that the Commission ever analyzed comparative case rulings on this score to determine the actual length of day-to-day management service that was carried out by applicants who received integration credit.<sup>4/</sup>

33. The fourth individual applicant, Mr. Jackson, is highly forgettable. He is not female, not a minority, has resided in the service area only seven years, his few civic activities are memberships only, begun about the time his FCC application was filed, his broadcast credentials are limited. The three remaining applicants are also highly forgettable. Each is a two-tiered applicant whose integration scheme has been rejected and/or who has been disqualified for false financial certifications and for hidden real parties in interest.

34. Thus, three of the four individual applicants do not offer realistic prospects of permanent or long-term full time integration, the fourth individual applicant has virtually none of the background credentials on which the integration criterion is premised, and the three two-tiered applicants do not offer meaningful integration prospects at all. Yet, the Judge below has evaluated these seven commercial integration cases exclusively under the "FCC-integration" criterion and selected a preferred applicant from among them, while ignoring Georgia Public by excluding relevant and probative evidence:

(a) That the actual, real world record of Georgia Public reflects a continuing course of conduct over a period of 32 years dating back to 1959 in which radio and television stations have been built, owned and operated to provide program service in the public interest to communities and citizens throughout the State of Georgia.

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<sup>4/</sup>In a leading case involving crediting the FCC-integration proposal of an elderly person, the individual in question passed away prior to the conclusion of the hearing proceeding. Peoples Broadcasting Corp., 52 RR2d 1617, 1630-31 (1983).



(b) That this ownership and operation is truly permanent as envisioned by the Commission in its 1965 policy statement. Not a single radio or television station owner and operated by Georgia Public has ever been sold during this 32-year period.

(c) That members of the Georgia Public Telecommunications Commission are nine leading citizens in the area of education, male and female, having diverse backgrounds and credentials, with ties to the State Board of Education, the Regents of the University System of Georgia and the Georgia Department of Technology and Adult Education, who set policies for the operation of the stations.

(d) That the day-to-day management of the stations is carried out by professional broadcasters, selected, employed and supervised by the Commission. These professionals have outstanding credentials and long entures of service with Georgia Public -- Dr. Ottinger since 1968 (23 years), Mr. Bugg since 1965 (26 years) and Mr. Goodman since 1971 (20 years).

(e) That four of the Commission's members and all three of the top management persons are residents of the proposed service area.

(f) That the Commission members and the mangement personnel are required by law to carry out their duties and responsibilities faithfully. They are thus trustees of the broadcast licenses for the benefit of the citizens of Georgia wholly apart from their licensee responsibilities under the Communications Act.

35. It is not feasible, practicable or desirable for the citizens of the State of Georgia, or the nine educational leaders who serve as their surrogates, to spend all or a major portion of their time managing the Georgia Public stations. Thus, it is not feasible for a state agency with a responsible policy and administrative governance system to comply with the arcane panoply of "FCC-integration" case precedent. Nonetheless, the program service of the Georgia Public stations is wedded to the public interest in a sound, meaningful, long-term, institutional way. In the hands of Georgia Public, the bonding of the Roswell station to the public interest will be strong and lasting. While the methodology by which

Georgia Public will achieve effectuation of program service in the public interest differs from the methodology by which the "integrated" applicants propose to achieve such effectuation, this does not mean that Georgia Public's methodology should be disregarded. Evidence regarding that methodology is relevant and probative, indeed highly relevant and probative, under the comparative issue in this proceeding. Such evidence demonstrates the likelihood of effectuation of program service by the Roswell station in the public interest (based on a 32-year proven history) that is vastly more compelling than such a likelihood resulting from the "integration" proposals of the other applicants in this proceeding (based on irrational "FCC-integration" premises and dubious applicant promises that have never been tested or proven to be valid). It is legal error for this proceeding to be conducted without considering that evidence.

B.

It was error to assess a demerit against Georgia Public for its ownership of broadcast stations in the State of Georgia because other relevant and probative evidence excluded from the record shows that Georgia Public proposes to enhance diversity by providing program services to meet needs that are not fulfilled by commercial radio broadcasters

36. Georgia Public has tendered evidence that it will enhance the diversity of programming to Roswell and other areas to be served by the station. This evidence consists of a showing of an unfulfilled need for classical music and cultural programming and a showing of specific programs designed to fulfill that need.

37. A traditional drawback to the consideration of this type of evidence as a basis for awarding construction permits of broadcast facilities has been the ephemeral and changing nature of programming formats. In the commercial marketplace radio station formats are designed to achieve audience acceptance and a financially viable operation. If one format is not successful another is tried. Stations change hands from time to time -- under current Commission policies considerably more frequently than in earlier time periods. A format in existence today may not be in existence tomorrow. Formats

proposed by applicants for construction permits for new facilities are particularly suspect.

38. None of which applies to Georgia Public. (a) In the first place, these are not paper proposals for the future. These proposals are based upon the existing operations of nine other Georgia Public radio stations in operation dating back eleven years to 1980. (b) In the second place, the Georgia Public station in Roswell will not be operated commercially and will not have a need to enlist advertiser support in order for the survival of its specialized program service. Georgia Public has no commercial considerations motivating its program decisions and policies. Georgia Public owns and operates its other stations, and would own and operate the Roswell station, under a mandate to provide cultural, public affairs and educational program services for the citizens of Georgia. There is no other agenda that would drive or influence its programming judgment. (c) In the third place, the Roswell radio station will not be sold. This agency and its predecessor agencies have continuously built, owned, operated and expanded television and radio broadcast services to the citizens of the state. Georgia Public's entire history has been to maintain and enhance its facilities and service, not to sell them.

39. The proposal to provide a classical music program service during the majority of the hours of the week, in light of the day-time only operation of WGKA and the signal difficulties of WABE, constitutes a program service fulfilling a need for which there is not substantial existing programming in line with Commission precedent. Policy on Comparative Broadcast Hearings, supra; George E. Cameron, Jr., 71 FCC2d 460 (1979); Mid-Florida Television Corp., 36 RR2d 219 (1976); American International Development, Inc., 49 RR2d 1029, 1037 (1981). The proposal to present cultural and performing arts programs, in light of the paucity of such programs as reported by all of the existing stations, likewise is a program proposal for which there is not substantial existing programming in line with Commission precedent. Id. This case for a "specialized program" preference is particularly persuasive in light of the large number of commercial AM and FM services available in the Atlanta marketplace, providing a vast multiplicity of advertiser-supported commercially-driven programming services. Rollins Broadcasting,

Inc., 20 RR 976, 978 (1960).

40. The proposal to provide local news and public affairs programming to serve the community of Roswell would not appear to be a "specialized" programming service within the concepts of Commission precedent cited above. However, there is a significant distinction on this score between Georgia Public and the other applicants. Each of the other applicants of necessity must develop a programming service that will enlist advertiser support rendering the station an economically feasible and desirable one. In that process the seemingly unavoidable motivation of licensees of radio stations in smaller communities which are a part of a major metropolitan area is to gear programming to the overall metropolitan area. If that natural development should occur with regard to a "commercial" operator of the Roswell station, attention to local news and public affairs would suffer. No such commercial considerations drive the program service of the Georgia Public radio stations. Having made its commitment to the community of Roswell, Georgia Public will carry out that commitment as a matter of its legislative and executive mandate.

#### CONCLUSION

41. What appears to be the last available FM frequency for a facility in Roswell and in the metropolitan Atlanta area is at stake here. That frequency should be used to serve the local news and public affairs needs and interests of the community of Roswell and the immediate environs. For sure Georgia Public will meet those needs and interests. Perhaps the other applicants will as well. However, with regard to the music and other aspects of the program service, there is a clear cut public interest choice available to the Commission. One is to grant the construction permit to Georgia Public, an entity that is a guaranteed long-term licensee with a governmental mandate to provide program services for which an unfulfilled need has been demonstrated. The alternative is to award the construction permit to one of a number of applicants who will gear their formats to the commercial marketplace, who will add yet another signal to the mix of commercially-driven programming formats and who inevitably will sell

the facility (the odds are probably sooner rather than later) to a new owner with presently unknown credentials, unknown "comparative hearing" attributes and unknown program service motivation.

42. The Initial Decision of Judge Sippel should be reversed and the matter should be remanded for receipt of evidence, and for a comparative evaluation and decision based on that evidence, as described in the foregoing brief.

Respectfully submitted

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July 8, 1991

CERTIFICATE OF SERVICE

I, Tiffany P. Simone, an administrative assistant, with the law firm of Bechtel & Cole, Chartered do hereby certify that I have caused the foregoing COMMENTS OF THE GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION to be served by hand delivery or placed in the U.S. mail, first-class, postage pre-paid on this the 2nd day of June, 1992 to the following individuals:

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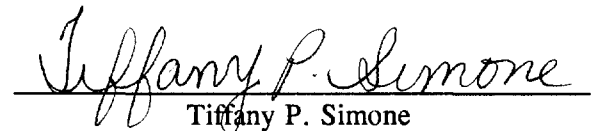
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